

IT 95-36  
Tax Type: INCOME TAX  
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS          )  
                             )  
      v.                    )   Docket:  
                             )  
XXXXXX                     )  
                             )   Hollis D. Worm  
                             )   Administrative Law Judge  
Taxpayers(s)               )  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely Protest by XXXXX and XXXXX (hereinafter referred to as the "taxpayers") to a Notice of Partial Refund (hereinafter referred to as the "Notice") issued to them on March 24, 1993. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayers incorrectly computed their credit for tax paid to other states, in this case the State of Wisconsin, for the 1989 tax year.

In their Protest to the Notice, these taxpayers contend that the capital gain realized from the sale of the Wisconsin property was fully taxable in both Illinois and Wisconsin, and the fact that Wisconsin adjusts the gain downward for purposes of imposing its state tax does not change the fact that the entire gain is considered in computing Wisconsin tax. They also did not request a formal hearing in this matter. Therefore, the following issue is being heard on the information provided by the taxpayers in their Protest and on the Notice of Partial Refund: 1) whether the Department correctly recomputed the foreign tax credit the taxpayers should

be allowed for the 1989 tax year?

Following a review of the documentation, it is recommended that this matter be resolved in favor of the Department of Revenue.

FINDINGS OF FACT:

1. The taxpayers filed a Form IL-1040-X dated, June 22, 1992, in which they sought a foreign tax credit for taxes paid to the State of Wisconsin for the tax year ended December 31, 1989. Taxpayer Ex. No. 1

2. On March 24, 1993 the Department issued a Notification of Partial Refund, in which the claim was approved in part and denied in part. Dept. Ex. No. 1

3. The taxpayers filed a timely Protest. Taxpayer Ex. No. 2

4. The taxpayers were resident of Illinois and filed an Illinois income tax return for the 1989 tax year.

5. The taxpayers filed a nonresident/part-year resident income tax return with the State of Wisconsin for the 1989 tax year.

6. On the taxpayers' Wisconsin income tax return they reported a capital gain in the amount of \$55,885, of which the State of Wisconsin elected to tax only 60%, or the amount of \$22,352.

7. The taxpayers failed to demonstrate that the Department incorrectly recomputed their foreign tax credit for the 1989 tax year.

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/601(b)(3), provides for a foreign tax credit, in pertinent part as follows:

The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 210 (a) and (b) otherwise due under this Act for such taxable year. The aggregate credit provided under this paragraph shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201 (a) and (b) otherwise due under this Act as the amount of the taxpayer's base income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the

taxable year.

The purpose of the provision for a foreign tax credit is to avoid double taxation by crediting a resident taxpayer with the amounts of tax actually imposed by a foreign state and actually paid to such foreign state on identical income which was also subject to tax in Illinois. *Hutchins v. Illinois Department of Revenue*, No. 79-MI-130115 (Circuit Court of Cook County, 1979).

In their letter of Protest, the taxpayers did not request a formal hearing. 35 ILCS 980(a) Therefore, the rebuttal to the Department's prima facie case in this cause is found in the taxpayers' representations as found in their written Protest.

The taxpayers' contention that the capital gain realized from the sale of Wisconsin property was fully taxable in both states is without merit. The State of Wisconsin elected to tax only 60% of the realized gain, therefore, 40% of the gain was not taxed by Wisconsin.

The statute (35 ILCS 5/601(b)(3)) sets out the proper computation for determining the amount of foreign tax credit. This includes a determination of Illinois base income subject to tax under Section 201 of the Act (35 ILCS 5/201), which, in turn, includes all of a taxpayer's adjusted gross income, as modified by statutory provisions not here relevant. 35 ILCS 5/203(a)(1) The fact that Illinois requires that a taxpayer's adjusted gross income be modified by the addition of the deduction allowable under Section 1202 of the Internal Revenue Code in order to arrive at base income is not material to the computation of the credit since such increase in income is not subject to tax by both states. If Illinois seeks to tax income which is not subject to tax in another state, there is no credit.

Accordingly, the Department correctly recomputed the foreign tax credit the taxpayers should be allowed for the 1989 tax year, and the

Notice of Partial Refund should be upheld.

Hollis D. Worm  
Administrative Law Judge

May 18, 1995